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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIEU DAI HUYNH

Appeal 2011-001851
Application 10/797,826
Technology Center 1700

Before EDWARD C. KIMLIN, ADRIENE LEPIANE HANLON, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 7-10, 12, and 13.
We have jurisdiction under 35 U.S.C. § 6(b).

Claim 7 is illustrative:

7. An aqueous dye receiving coating composition comprising a blend of:
 - (a) a first solvent free aqueous dispersion of aliphatic polyether-polyurethane resin; and

(b) a second solvent free aqueous dispersion of aliphatic polyester-polyurethane resin, wherein the weight ratio of resin (a) to resin (b) is in the range of 1:1 to 3:1, based on the resin solids of (a) and (b).

The Examiner relies upon the following references in the rejection of the appealed claims (Ans. 3):

Reischl	3,714,095	Jan. 30, 1973
Bagaglio	EP 0 358 328 A1	Mar. 14, 1990
Rhoades	5,082,824	Jan. 21, 1992
Schafheutle	5,334,690	Aug. 02, 1994
Ozawa	2002/0176968 A1	Nov. 28, 2002

Appellant's claimed invention is directed to a composition comprising a blend of first and second solvent free aqueous dispersions. One dispersion comprises aliphatic polyether-polyurethane resin and the other dispersion comprises an aliphatic polyester-polyurethane resin. The weight ratio of the polyether resin to the polyester resin is in the range of 1:1 to 3:1. The composition finds utility as an aqueous dye receiving coating.

The appealed claims stand finally rejected as follows:

- (a) claims 7, 8, 10, 12, and 13 under 35 U.S.C. § 102(b) as being anticipated by Reischl,
- (b) claims 7-10, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over Schafheutle in view of Bagaglio and Ozawa, and
- (c) claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Rhoades.

We have thoroughly reviewed the respective positions of Appellant and the Examiner. In so doing, we agree with Appellant that the Examiner's rejections are not sustainable.

We consider first the § 102 rejection over Reischl. We agree with the Examiner that the appealed claims define a composition comprising a solvent free aqueous dispersion of a polyether-polyurethane resin and a polyester-polyurethane resin, but do not require that the composition is made by blending two solvent free dispersions. It is sufficient that Reischl describe a composition comprising a solvent free blend of the two polyurethane resins. However, we concur with Appellant that the reference does not describe within the meaning of § 102 the claimed weight ratio of polyether resin to polyester resin, namely, 1:1 to 3:1. Reischl discloses that the polyether resin is present in an amount of 40-99.5% by weight and that the polyester resin is present in an amount of 0.5-60% by weight. Manifestly, the reference discloses a broad range of ratios of the two resins which encompasses the claimed ratios. However, it is well settled that a prior art disclosure of a broad range is not a description under § 102 of a claimed narrow range that falls within the broad range. *See Atofina vs. Great Lakes Chemical Corp.*, 441 F.3d 991,999 (Fed. Cir. 2006). Accordingly, the Examiner's § 102 rejection constitutes reversible error.

Concerning the § 103 rejection of claim 9 over Reischl in view of Rhoades, Rhoades is cited for disclosing polyaziridine as a cross-linking agent, but the reference does not remedy the deficiency of Reischl discussed above with respect to the § 102 rejection.

We now turn to the § 103 rejection over Schafheutle in view of Bagaglio and Ozawa. Schafheutle discloses a polyurethane dispersion comprising the reaction product of a polyester polyol and a polyether polyol but fails to disclose a blend of a polyether polyurethane and a polyester polyurethane. Bagaglio teaches a polyurethane made from polyesters and

polyethers, and Ozawa discloses a polyurethane comprising polyether and polyester groups in the backbone. However, as stressed by Appellant, neither Bagaglio nor Ozawa teaches a blend of polyether polyurethanes and polyester polyurethanes. As submitted by Appellant,

the Examiner has failed to establish a *prima facie* case of obviousness because even if one skilled in the art were motivated to make all of the modifications the Examiner has suggested with respect to the Schafheutle polyurethane coating, the Bagaglio isocyanate prepolymer composition and the Ozawa inkjet coating, the resulting composition would not be that claimed by Appellant

(App. Br. 10, second full para.). It is fundamental for a finding of obviousness that the combined features of the applied references result in the claimed invention. Also, the Examiner has not established that a polyurethane comprising polyether and polyester groups is equivalent in any respect to a blend of polyether polyurethanes and polyester polyurethanes.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's rejections.

REVERSED

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